

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 2/23/10

-----X
TESFA WALTERS,

Plaintiff,

-against-

DETECTIVE VALENTI,

Defendant.
-----X

08 Civ. 7154 (RJH)(THK)

ORDER

On December 22, 2009, Magistrate Judge Theodore H. Katz issued a Report and Recommendation ("Report") recommending that the Court dismiss plaintiff's case for failure to prosecute. To date, the Court has neither received any objections to the Report nor any other communication, such as a letter requesting an extension of time in which to file objections, from Plaintiff.

The district court adopts a Magistrate Judge's report and recommendation when no clear error appears on the face of the record. See Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). However, the court is required to make a de novo determination of those portions of a report to which objection is made, 28 U.S.C. § 636(b)(1)(C), by reviewing "the Report, the record, applicable legal authorities, along with Plaintiff's and Defendant's objections and replies." Badhan v. Lab. Corp. of Am., 234 F. Supp. 2d 313, 316 (S.D.N.Y. 2002). The court may then accept, reject, or modify in whole or in part recommendations of the Magistrate Judge. See Nelson, 618 F. Supp. at 1189. If a party fails to object to a report within 14 days of being served with the report, that party waives their right to object and appellate review of the district court's decision adopting the

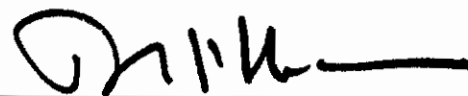
report, absent unusual circumstances, is precluded. See United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997).

The Court notes with some concern that it has been unable to confirm that plaintiff is aware of Judge Katz's Report, and that plaintiff is no longer at the address on file with the Court. Out of an abundance of caution, the Court has waited to issue this Order an additional 45 days beyond the 14 days prescribed for objections to a Magistrate's Report and Recommendation. In light of the facts underlying the recommendation—plaintiff's failure to prosecute the action for one year and failure to keep the Court apprised of his mailing address despite the Court's October 23, 2008 request that he do so—the Court does not believe that additional delay would be fruitful.

The Court finds that no clear error appears on the face of the record and hereby adopts the Report. The Clerk shall close this case.

SO ORDERED.

Dated: New York, New York
February 17, 2010

A handwritten signature in black ink, appearing to read 'R. J. Holwell', followed by a horizontal line.

Richard J. Holwell
United States District Judge